

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

BILLIE JEROME ALLEN,

Movant,

vs.

UNITED STATES OF AMERICA,

Respondent.

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Case No. 4:07CV00027 ERW

MEMORANDUM AND ORDER

This matter comes before the Court on Movant Billie Jerome Allen's ("Allen") Motion for Discovery and Evidentiary Hearing [doc. #116].

Allen brings this case under 28 U.S.C. § 2255(a), which provides a remedy for a federal prisoner who contends that his "sentence was imposed in violation of the Constitution or the laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack." § 2255(b) provides that a § 2255 movant is entitled to an evidentiary hearing on a given claim "[u]nless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief." Thus, no evidentiary is required "if the claim is inadequate on its face or if the record affirmatively refutes the factual assertions upon which it is based." *Shaw v. United States*, 24 F.3d 1040, 1043 (8th Cir. 1994).

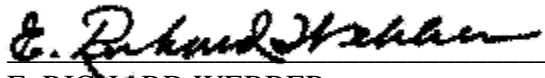
Because § 2255(b) explicitly outlines to what extent Allen is entitled to an evidentiary hearing, this Motion is redundant to the § 2255 Motion upon which this litigation is based. In the Memorandum and Order addressing Allen's claims that will follow, the Court will specifically address the sufficiency of each of his claims and thereby determine whether he is entitled to an

evidentiary hearing. As such, the present Motion is unnecessary and will be denied.

Accordingly,

IT IS HEREBY ORDERED that Movant Billie Jerome Allen's Motion for Discovery and Evidentiary Hearing [doc. #116] is **DENIED**.

Dated this 31st Day of March, 2011.

A handwritten signature in black ink, appearing to read "E. Richard Webber", written over a horizontal line.

E. RICHARD WEBBER
SENIOR UNITED STATES DISTRICT JUDGE